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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,551	04/27/2006	Edward Fey	50047/015002	5268
21559	7590	09/17/2009		
CLARK & ELBING LLP 101 FEDERAL STREET BOSTON, MA 02110			EXAMINER CLARK, AMY LYNN	
			ART UNIT 1655	PAPER NUMBER
			NOTIFICATION DATE 09/17/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentadministrator@clarkelbing.com

# Office Action Summary

## Application No.

10/559,551

## Applicant(s)

FEY ET AL.

## Examiner

Amy L. Clark

## Art Unit

1655

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1, 3-17 and 20-56 is/are pending in the application.
- 4a) Of the above claim(s) 6-10, 12-17 and 20-56 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Acknowledgment is made of the receipt and entry of the amendment filed on 06/08/2009 with the cancellation of claims 18 and 19, and newly amended claims 1, 10-13, 20, 22-28, 34 and 45.

### ***Election/Restrictions***

The election/restriction requirement remains for the reasons of record.

This application contains claims 6-10, 12-17 and 20-56 are drawn to an invention nonelected with traverse in the reply filed on 09/17/2008. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Any rejection found in the previous Office Action and not repeated herein has been withdrawn based upon Applicants' amendments to the claims, wherein Applicants now claim that the composition consists essentially of two or more ingredients.

**Claims 1, 3-5 and 11 are being examined on the merits.**

***Claim Rejections - 35 USC § 103***

Claims 1, 3-5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiners (O, DE 10118999 A1, Translation provided herein), in view of Morino et al. (P, JP 09-176010 A, Translation provided herein), Maurer et al. (N\*, EP 1208849 A1, Abstract only),

<http://web.archive.org/web/20020616220742/http://godsremedy.com/hepatitis/what.htm> (U), Kast (V, PubMed Abstract),

Holistic Online (W,

[http://web.archive.org/web/20001029192423/http://holisticonline.com/Herbal-](http://web.archive.org/web/20001029192423/http://holisticonline.com/Herbal-Med/Herbs/h70.htm)

[Med/ Herbs/h70.htm](http://web.archive.org/web/20001029192423/http://holisticonline.com/Herbal-Med/Herbs/h70.htm)) and Vitamin B5 (Pantothenic acid) (X,

[http://web.archive.org/web/20030524163420/http://www.health-diets.net/healthsearch/b5\\_vit.htm](http://web.archive.org/web/20030524163420/http://www.health-diets.net/healthsearch/b5_vit.htm)).

Reiners teaches a composition effective against cell damage, which can lead to arthritis (which reads on joint enhancer, since it helps to prevent arthritis), comprising oat extract and L-methionine (See abstract) and further optionally comprising vitamin from the B-vitamin family (See translation).

Morino teaches a composition for treating rheumatoid arthritis (which reads on joint enhancer) comprising quercetin.

Maurer teaches bromelain is used for the manufacture of a medicament for treating rheumatoid arthritis.

<http://web.archive.org/web/20020616220742/http://godsremedy.com/hepatitis/what.htm> teaches that oat straw herb is useful for treating arthritis.

Kast teaches that borage oil has shown so benefit in the treatment of rheumatoid arthritis.

Holistic Online teaches that horsetail is a folk remedy for arthritis and that the Chinese also use it to treat arthritis.

Vitamin B5 (Pantothenic acid) teaches that vitamin B5 supplements treat rheumatoid arthritis.

it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the composition taught by Reiners by combining oat straw (*Avena sativa*), L-methionine, vitamin B<sub>5</sub>, horsetail, oat straw powder, quercetin, borage seed oil and bromelain, which are all ingredients that have the same functional effect of treating arthritis, as clearly taught by Reiners, Morino, Maurer, <http://web.archive.org/web/20020616220742/http://godsremedy.com/hepatitis/what.htm>, Kast, Holistic Online and Vitamin B5 (Panthothenic acid). Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the instantly claimed ingredients of oat straw (*Avena sativa*), L-methionine, vitamin B<sub>5</sub>, horsetail, oat straw powder, quercetin, borage seed oil and bromelain for their known benefit in treating arthritis and, therefore, improving joints, since each claimed ingredient is well known in the art for the same purpose, as useful for treating arthritis and, therefore, improving joints, and for the following reason:

It is *prima facie* obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from

their having been individually taught in the prior art." *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980); *In re Crockett*, 279 F.2d 274, 126 USPQ 186 (CCPA 1960); and *Ex parte Quadranti*, 25 USPQ2d 1071 (Bd. Pat. App. & Inter. 1992). As the court explained in *Crockett*, the idea of combining them flows logically from their having been individually taught in prior art. Therefore, since each of the references teach oat straw (*Avena sativa*), L-methionine, vitamin B<sub>5</sub>, horsetail, oat straw powder, quercetin, borage oil and bromelain, are useful for treating arthritis and improving joints, it would have been obvious to combine these ingredients with the expectation that such a combination would be effective for treating arthritis and improving joints. Thus, combining them flows logically from their having been individually taught in prior art.

From the teachings of the references, it is apparent that one of ordinary skill in the art one would have been motivated to combine oat straw (*Avena sativa*), L-methionine, vitamin B<sub>5</sub>, horsetail, oat straw powder, quercetin, borage oil and bromelain to provide a beneficial composition for the expected benefit of treating arthritis and improving joints because at the time the invention was made, the instantly claimed ingredients of oat straw (*Avena sativa*), L-methionine, vitamin B<sub>5</sub>, horsetail, oat straw powder, quercetin, borage oil and bromelain were known to be useful for treating arthritis and improving joints, and since the ingredients and mode of administering the ingredients, which are one and the same as those claimed by Applicants, was known in the art at the time the invention was made, as clearly taught by Reiners, Morino, Maurer,

<http://web.archive.org/web/20020616220742/http://godsremedy.com/hepatitis/what.htm>,

Kast, Holistic Online and Vitamin B5 (Panthothenic acid). Thus the combined composition of oat straw (*Avena sativa*), L-methionine, vitamin B<sub>5</sub>, horsetail, oat straw powder, quercetin, borage oil and bromelain would have been expected to be even more effective for treating arthritis and improving joints because the claimed ingredients were all useful for this purpose, as clearly taught by Reiners, Morino, Maurer, <http://web.archive.org/web/20020616220742/http://godsremedy.com/hepatitis/what.htm>, Kast, Holistic Online and Vitamin B5 (Panthothenic acid).

Finally, one of ordinary skill in the art would have had a reasonable expectation of success to combine the following ingredients for treating arthritis and improving joints to gain the benefits of individual components as part of a composition for treating arthritis and improving joints: oat straw (*Avena sativa*), D-L-methionine, vitamin B<sub>5</sub>, horsetail, oat straw powder, quercetin, borage seed oil and bromelain, to provide a beneficial composition for the expected benefit of treating arthritis and improving joints because at the time the invention was made, these ingredients were well known treating arthritis and improving joints, as clearly taught by by Reiners, Morino, Maurer, <http://web.archive.org/web/20020616220742/http://godsremedy.com/hepatitis/what.htm>, Kast, Holistic Online and Vitamin B5 (Panthothenic acid).

Based upon the beneficial teachings of the cited references, the skill of one of ordinary skill in the art, and absent evidence to the contrary, there would have been a reasonable expectation of success to result in the claimed invention.

Accordingly, the claimed invention was prima facie obvious to one of ordinary skill in the art at the time the invention was made, especially in the absence of evidence

to the contrary.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1, 3-5 and 11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

**No claims are allowed.**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy L. Clark whose telephone number is (571)272-1310. The examiner can normally be reached on Monday to Friday between 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALC  
Examiner, AU 1655

/Christopher R. Tate/  
Primary Examiner, Art Unit 1655